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STATE PASS TO USTR FOR WEISEL AND BISBEE
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SUBJECT: THAILAND: 2009 INVESTMENT CLIMATE STATEMENT

REF: 08 STATE 123907

¶1. (U) Per reftel request, below is Post's draft of the 2009 Investment Climate Statement (ICS) for Thailand. We also e-mailed a Microsoft Word version to EB/IFD/OIA (J. Nathaniel Hatcher and Gregory Hicks), per reftel instructions.

¶2. (U) Begin text of the 2009 Investment Climate Statement for Thailand:

Chapter 6: Investment Climate

- Openness to Foreign Investment
- Conversion and Transfer Policies
- Expropriation and Compensation
- Dispute Settlement
- Performance Requirements and Incentives
- Right to Private Ownership and Establishment
- Protection of Property Rights
- Transparency of Regulatory System
- Efficient Capital Markets and Portfolio Investment
- Political Violence
- Corruption
- Bilateral Investment Agreements
- OPIC and Other Investment Insurance Programs
- Labor
- Foreign-Trade Zones/Free Ports
- Foreign Direct Investment Statistics
- Web Resources

Openness to Foreign Investment

Thailand maintains an open, market-oriented economy and encourages foreign direct investment as a means of promoting economic development, employment, and technology transfer. In recent decades, Thailand has been a major destination for foreign direct investment, and hundreds of U.S. companies have operated here successfully. Thailand continues to welcome investment from all countries and seeks to avoid dependence on any one country as a source of investment.

In February 2008, the inauguration of an administration formed by a parliamentary coalition led by the People's Power Party (PPP) marked the return of a democratically-elected government to Thailand, almost 17 months after the 2006 coup d'etat. For much of 2008, the People's Alliance for Democracy, a political group, engaged in street protests that placed significant pressure on the PPP-led government; these protests included the occupation of Government House for more than three months, and the occupation of Bangkok's airports for more than one week near the end of the year.

Additionally, Constitutional Court rulings forced Prime Minister Samak Sundaravej out of office in September and then, on December 2, dissolved the PPP and forced Prime Minister Somchai Wongsawat out of office. A subsequent realignment in the parliament resulted in the election of Abhisit Vejjajiva, leader of the Democrat Party, as Prime Minister. As of January 2009, most investors were cautiously hopeful that the political situation would become less tumultuous and allow the government to pursue business-friendly policies. One of newly-elected Prime Minister Abhisit's most difficult but immediate tasks will be restoring the business and investor confidence in Thailand's economy after months of political turmoil, including the stand-offs at Bangkok's airports.

Despite the political unrest in 2008, the Thai economy outperformed its 2007 growth levels, registering 5.1 percent year-on-year growth for the third quarter and 4.3 percent year-on-year growth for the first nine months of 2008. This growth was largely attributed to strong exports of goods and services that grew at an 8.5 percent annual rate in real terms. Domestic demand and private investment, in contrast, grew by only 2.6 and 2.7 percent respectively. Exports are not expected to grow at the same pace for the last quarter of 2008 or during much of 2009 due to the forced shutdown of the two Thailand's international airports and the predicted slower global economic growth. The government has revised its economic growth projection to between zero and 2.0 percent for 2009. With a new government in place, government spending is expected to provide some fiscal stimulus during 2009 and the government's investment in key mega-projects could be an engine for economic growth. The goal is to boost consumer spending and domestic business confidence given that economic recession in major developed world markets will likely prevent exports, which represent 60 to 70 percent of GDP, from growing much.

In the wake of the 1997-98 Asian Financial Crisis, Thailand embarked on an International Monetary Fund (IMF)-sponsored economic reform program designed in part to foster a more competitive and transparent climate for foreign investors. Legislation establishing a new bankruptcy court, reforming bankruptcy and foreclosure procedures, and allowing creditors to pursue payment from loan guarantors was enacted in 1999. Other 1999 reforms include amendments to the Land Code, Condominium Act, and the Property Leasing Act, all of which liberalized restrictions on property ownership by non-Thais. The Foreign Business Act (FBA) of 1999 governs most investment activity by non-Thai nationals and opened limited additional business sectors to foreign investment. Nevertheless, foreign investment in most service sectors is limited to 49 percent ownership.

Many U.S. businesses, however, enjoy investment benefits through the U.S.-Thailand Treaty of Amity and Economic Relations (AER), originally signed in 1833. The 1966 iteration of the Treaty allows U.S. citizens and businesses incorporated in the U.S., or in Thailand that are majority-owned by U.S. citizens, to engage in business on the same basis as Thai companies, exempting them from most of the restrictions on foreign investment imposed by the Foreign Business Act. Under the Treaty, Thailand restricts American investment only in the fields of communications, transport, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in agricultural products. Notwithstanding their treaty rights, many Americans choose to form joint ventures with Thai partners, allowing the Thai side to hold the majority stake because of the advantages that come from familiarity with the Thai economy and local regulations.

Thailand began a series of trade negotiations during the government of Prime Minister Thaksin Shinawatra in an effort to gain a comparative advantage for Thai products in key markets and regions. In addition to trade deals with Japan, Australia and New Zealand, and "early harvest" agreements with India and China, Thailand continues to participate in regional trade liberalization discussions with ASEAN-India, ASEAN-Japan, ASEAN-Australia-New Zealand, ASEAN-Korea, EFTA (European Free Trade Association) and BIMSTEC (Bay of Bengal Initiative for Multisectoral Technical and

Economic Cooperation). The U.S. Government began FTA negotiations with the Thai government in June 2004, and conducted seven rounds of discussions through 2006. The negotiations were suspended following a military-led coup against the Thaksin government in September ¶2006. The United States will continue to monitor and evaluate developments in Thailand and will determine appropriate next steps.

Registration, Work Permits: Any entity wishing to do business in Thailand must register with the Department of Business Development at the Ministry of Commerce. Firms engaging in production activities need to register with the Ministries of Industry and Labor and Social Welfare. U.S. citizens can enter Thailand without a visa for visits of up to thirty days. In order to apply for a work permit, a foreigner must enter Thailand on a non-immigrant visa (issued at Thai embassies and consulates) for a stay of three months or, for foreigners with well-defined work or business plans, for a stay of one year.

Issuance of the three-month visa usually is completed within two or three days; the one-year visa requires approval from the Immigration Bureau of the Royal Thai Police in Bangkok. Upon obtaining a work permit, a holder of a three-month visa may apply for a one-year visa, which generally can be extended every year. Foreigners holding nonimmigrant visas who have lived in Thailand for at least three consecutive years may apply for permanent residence in Thailand if they meet strict criteria regarding investment or professional skills.

A new Alien Occupation Act, replacing the 1978 Act, continues to list occupations reserved exclusively for Thai nationals, including professional services such as accounting, architecture, law, engineering, the manufacture of traditional Thai handicrafts, and manual labor. However, the law does not apply to diplomatic missions, consular missions, representatives of member countries and officials of the United Nations and specialized institutions, personal servants traveling with and working for the above persons, and persons who have been exempted for a special mission by the Royal Thai Government. The Act also states that all non-Thai persons working in Thailand, with limited exceptions, or an employer of a non-Thai worker, must possess a work permit issued at the discretion of the Ministry of Labor. Some foreigners already working in Thailand are exempted through a "grandfather" clause. Factors that

influence the granting of work permits include the degree of specialization required by the position; the size of the firm in terms of number of employees and registered capitalization; and the ratio of Thai nationals to foreigners employed by the firm. Foreigners working for the Thai government or working on projects promoted by the Board of Investment (BOI) usually have little difficulty obtaining work permits and typically receive working permits within seven days of application and duration of the work permit is generally tied to the length of stay permitted by the visa. Government policy creates a preference for Thai nationals in the hiring of government consultants, although the government continues to hire foreign consultants. Work permits in other areas are sometimes difficult to obtain, despite the fact that senior manager and technical personnel are in short supply.

Currently, Thai laws allow the import of migrant workers from Burma, Laos and Cambodia on manual labor in certain industries such as textiles. Under the Alien Occupation Act, employers of unskilled workers are required to deduct a certain amount (to be specified by a Ministerial regulation issued by the Ministry of Labor) from salaries of their foreign workers and submit to a newly established 'Deportation Fund' which will be managed by a committee. The amount will be made in a single payment and can vary depending on the associated cost of deporting such foreign workers back to their native country if necessary. If the amount is not fully collected from the foreign workers, employers are ultimately responsible for the payments. Foreign workers will be given receipts and will be reimbursed within 30 days after they have returned to their home country at their own expense. However, foreign workers must make a reimbursement claim with receipts within two years after their departure from any immigration check-point. Interest (7.5 percent per annum) will be paid only if the refund process exceeds 30 days

after a claim.

Land Ownership: In general, non-Thai businesses and citizens are not permitted to own land in Thailand unless the land is on government-approved industrial estates. Under the 1999 amendment to the Land Code Act, foreigners who invest a minimum of 40 million baht (approximately US$1.2 million) are permitted to buy up to 1,600 square meters of land for residential use with the permission of the Ministry of Interior. The investment period requirement should be maintained for not less than three years. If the required land is not used as a residence within two years from the date of acquisition and registration, the Ministry shall have the power to dispose of the land. Petroleum concessionaires may own land necessary for their activities. Rather than purchasing, many foreign businesses instead sign long-term leases, then construct buildings on the leased land. Under the 1999 Condominium Act, non-Thais were allowed to own up to 100 percent of a condominium building if they purchased the unit between April 28, 1999 and April 28, 2004. Under the new Condominium Act B.E. 2551 (2007), foreign ownership in a condominium building, when added together, must not exceed 49 percent of the total space of all units in such building, excepting those purchased between 1999 and 2004. Foreign owners exceeding the legal limit must divest their property within one year.

Americans planning to invest in Thailand are advised to obtain qualified legal advice. Such advice is particularly important given the fact that Thai business regulations are governed predominantly by criminal law, not civil law. While foreigners rarely are jailed for improper business activities, violation of Thai business regulations can carry heavy criminal penalties, and criminal liability can be assessed under numerous laws.

Privatization: With the aim of encouraging capital inflows and relieving resource constraints in many key sectors of the economy, the previous Thaksin government led by Thaksin eagerly embarked on a privatization program for state-owned economic enterprises and state monopolies. The interim government that followed the September 2006 coup considered privatization too controversial and put it on hold. State-owned enterprises operate primarily in the utility, energy, telecommunications, banking, tobacco, and transportation sectors. In 2007, Thailand's 58 state-owned enterprises had total revenues of around 3.05 trillion Baht (approximately US$90 billion), employed approximately 270,000 people (0.7 percent of the Thai labor force), and accounted for approximately 35.9 percent of Gross Domestic Product (GDP). With or without privatization, the government is trying to downsize overstaffed state-enterprises.

The 1999 State Enterprise Corporatization Act provides the framework for the conversion of state enterprises into stock companies, and corporatization is viewed as an intermediate step toward eventual privatization. In June 2007, the outgoing Prime Minister Surayud initialed a proposed new Privatization Bill aimed at replacing the

1999 Corporation Act, which would have increased transparency in the privatization process but limited the sectors in which state enterprises could be privatized. The National Legislative Assembly (NLA) did not have time to consider the bill before its session ended in late December 2007, and the past two administrations under Prime Ministers Samak Sundaravej and Somchai Wongsawat did not consider any previous pending bills from the NLA

In 2001, the Thai government partially privatized the Petroleum Authority of Thailand (PTT) and Internet Thailand (note: "corporatization" describes the process by which an SOE adjusts its internal structure to resemble a publicly-traded enterprise; "privatization" means that a majority of the SOE's shares is sold to the public, and "partial privatization" refers to a situation in which less than half a company's shares are sold to the public.)

In 2002, the Thai government corporatized BankThai Bank and Krung Thai Card, a subsidiary company of Krung Thai Bank, the Airport Authority of Thailand (renamed to Airports of Thailand), and the Telecommunication Authority of Thailand. In 2003, the Thai government corporatized the Communication Authority of Thailand, and partially privatized Krung Thai Bank. In March 2004, the Thai

government conducted a successful initial public offering of 30 percent of the shares in Airports of Thailand, and a second public offering of Bangchak Petroleum Public Company and Thai Airways International.

In early 2004, labor protests prompted the government to postpone the planned corporatization of the Electricity Generating Authority of Thailand (EGAT). The Stock Exchange of Thailand's (SET) relatively weak performance in the first half of 2004 further dampened the pace of privatization. In June 2005, the Thai government corporatized the EGAT. However, EGAT's planned listing was delayed following an order by the Supreme Administrative Court that suspended its stock offering until the court finished its consideration of a petition filed by civil groups which oppose the privatization. The Court later found that full privatization could not proceed. Anti-privatization protesters filed a lawsuit challenging the legality of PTT's 2001 partial privatization. The Court ruled in December 2007 that the privatization was conducted legally but that PTT must transfer its natural gas pipeline business back to the government.

Draft legislation for a State Investment Corporation (SIC) is designed to set up a supervisory entity for state enterprise privatization. The SIC will be 100 percent owned by the Ministry of Finance, and would regulate state enterprises that have been converted into private companies under the 1999 State Enterprise Corporatization Act. Despite previous rejection, the Ministry of Finance is planning to resubmit it to the new government for consideration.

Other than PTT, AOT and MCOT, few significant privatizations have occurred. Thailand has removed tax disincentives on buying domestic financial institutions. The Financial Institutions Act passed at the end of 2007 raised the foreign ownership limit of 25 percent to 49 percent. Foreign banks in the form of full branches are still limited to operation of a single branch.

In January 2004, the Cabinet approved the Bank of Thailand's Financial Sector Master Plan (FSMP) designed to increase competition by eliminating regulatory boundaries within the financial sector, and at the same time to consolidate and strengthen the sector after its initial recovery from the financial crisis of 1997. The Bank of Thailand is Thailand's central bank. The FSMP classifies financial institutions as either commercial banks able to provide all financial services except insurance, securities trading and brokerage; and retail banks, which will focus on small- and medium-sized enterprises (SMEs) and lower-income customers. According to the FSMP, retail banks "...may provide virtually all types of financial transactions with the same exceptions as commercial banks." The FSMP allows foreign banks to operate as full branches under the same conditions as Thai commercial banks, but without the option of opening branch offices, or subsidiaries, which would also operate as Thai commercial banks, and are allowed to open four branches (one per year) in addition to the head office. As a result of the FSMP, nine new banking licenses were granted by the Thai financial authorities in 2005. For the next phase, the Bank of Thailand will introduce the second Financial Sector Master Plan some time in 2009. The second FSMP, a three-year plan, would broaden the types of services financial institutions can provide and would open up the sector to more competition. The first FSMP is available in English at www.bot.or.th/bothomepage/BankAtWork/FinInsti tute/ FISystemDevPlan/ENGVer/pdffile/eng.pdf.

Conversion and Transfer Policies

Exchange controls are governed by the Exchange Control Act of B.E. 2485 (1942), amended in 1984, and Ministerial Regulation Number 13 of 154, and are administered by the Bank of Thailand. Inward remittances are free of controls. However, the Ministry of Finance has issued a Ministerial Regulation, effective on October 28, 2007, to require any person who brings foreign currencies in or out of the Kingdom exceeding US$20,000 or the equivalent must declare the amount at a Customs check point.

Foreigners staying in Thailand for less than three months, foreign embassies, and international organizations are exempt from this requirement. In July 2007, the Ministry of Finance and the Bank of Thailand agreed to relax regulations on capital flows to balance capital movements and to increase flexibility for Thai businesses in managing their foreign currency holdings. The changes included abolishing the surrender requirement for all foreign currency receipts from abroad to be sold or deposited within 15 days; doubling the amount of foreign currency deposited with financial institutions in the country from US$0.5 million to US$1 million for individuals; doubling the foreign currency deposited from US$50 million to US$100 million for juristic persons with future foreign exchange obligations, and increasing to US$0.1 million for individuals and to US$0.3 million for juristic persons without obligation. Thai nationals are subject to quantitative limits on the amount of foreign currency that can be remitted abroad without specific permission of the Bank of Thailand. The limits vary depending upon the purpose of the transaction, and range from US$100 million per annum for business investment or loans to subsidiaries, to US$1 million per annum for remittances to family members. The Bank of Thailand must approve the purchase of immovable assets or securities abroad. The new regulation, however, also increases the limit of overseas fund remittances in foreign currencies up to US$1 million by Thai individual. In addition, the authorities also relaxed the repatriation requirement for exporters with foreign currency receipts by extending the period in which such receipts must be brought into the country from within 120 days, to within 360 days and requiring that the foreign currencies be deposited or sold with financial institutions within another 360 days.

Commercial banks are authorized to undertake most routine foreign remittance transactions without prior approval of the Bank of Thailand. Nonresidents can open and maintain foreign currency accounts with authorized banks in Thailand. Such accounts must use funds that originate abroad. If nonresidents have underlying liabilities or transactions in Thailand, they can open and maintain Thai Baht accounts under Nonresident Baht Accounts (NRBA) with authorized banks in the country; however, the combined outstanding of all NRBAs for each NR at the end of the day can not exceed 300 million Baht (approximately US$8.8 million). Since February 2008, the Bank of Thailand has segregated the NRBA into two types: Nonresident Baht Account for Securities (NRBS) for investment in securities and other financial instruments, and Nonresident Baht Account (NRBA) for general purposes. The cap on NRBAs was introduced in October 2003 with the goal of limiting speculation on the Thai Baht. All remittances exceeding US$10,000 for any purpose other than export must be reported to the Bank of Thailand.

In an effort to slow currency speculation, the Bank of Thailand in December 2006 introduced new measures requiring all financial institutions to hold in reserve for one year 30 percent of all capital inflows not related to trade in goods or services or repatriation of Thai residents' investment overseas. However, the measure was never fully implemented and in February 2008, the measure was completely lifted.

Expropriation and Compensation

Private property can be expropriated for public purposes in accordance with Thai law, which provides for due process and compensation. In practice, this process is seldom used, and has been principally confined to real estate owned by Thai nationals and needed for public works projects. U.S. firms have not reported any problems with property appropriation in Thailand.

Dispute Settlement

Thailand has a civil and commercial code, including a Bankruptcy Act. Monetary judgments are calculated at the market exchange rate.

Decisions of foreign courts are not accepted or enforceable in Thai courts. Disputes such as the enforcement of property or contract

rights have generally been resolved through the Thai courts. Thailand has an independent judiciary that generally is effective in enforcing property and contractual rights. The legal process is slow in practice, however, and litigants or third parties sometimes affect judgments through extra-legal means.

In addition, companies may establish their own arbitration agreements. Thailand signed the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States in 1985, but has not yet ratified the Convention. Thailand is a member of the New York Convention, however, and enacted its own rules on conciliation and arbitration in the Arbitration Act of 1987. The Arbitration Office of the Ministry of Justice administers these procedures.

The Bankruptcy Act was amended in 1999 to provide Chapter 11-style protection to debtors, and to give debtors and creditors the option of negotiating a reorganization plan through the courts instead of forcing liquidation. The Act now allows creditors to extend additional loans to insolvent firms without losing the right to claim compensation during a future restructuring or liquidation process, but only if the new loan is intended to keep the firm in operation. Also in 1999, the Act was amended to facilitate the financial restructuring process. Higher minimum levels for individual and corporate bankruptcies were established, and the previous ten-year period of bankruptcy status was reduced to three years.

In 2004, Parliament approved changes to the Bankruptcy Act including tightening the rules under which some debtors can emerge from bankruptcy status and streamlining the legal appeals process in bankruptcy and restructuring cases. In an effort to quicken the foreclosure process, amendments to the Civil Procedure Code on Execution of Judgments have limited appeal options available to debtors. Under the old regulations, debtors were free to appeal each action taken with respect to the execution of a bankruptcy judgment. Such appeals, often frivolous in nature, were one of the tactics debtors used to delay the foreclosure process. In June 2001, the Supreme Court set an important legal precedent by ruling in favor of implementing a creditor-backed corporate restructuring plan opposed by the former owner of the business in question.

The Bankruptcy Court Act established a specialized court for bankruptcy cases. During the first seven months of 2008, the Court issued verdicts on 12,047 cases. Individual cases can take months or even years to work their way through the legal system, however, and many businesses have urged the government to speed up the bankruptcy procedure.

The 2003 case of Thailand Petrochemical Industry (TPI), the country's largest corporate debtor, raised serious concerns about the transparent and fair application of the Bankruptcy Act. In a protracted battle between creditors and the company founder for control of TPI, the Central Bankruptcy Court removed a creditor-backed foreign firm as managing administrator of the TPI holding company and decreed that the Ministry of Finance would administer TPI. In 2006, debt-holders approved a new TPI restructuring agreement that reduced their equity in the company and gave management control of TPI to PTT, a large Thai oil and chemicals company.

Performance Requirements and Incentives

Thailand has committed to implement all WTO agreements, including Trade-Related Investment Measures (TRIMS). In its latest Trade Policy Review in November 2007, the WTO noted, "Thailand has maintained its support and commitment to the liberalization of the multilateral trading system, especially for agriculture. It also remains committed to "open regionalism" and considers regional trade liberalization an effective catalyst for freer trade and complementary to multilateralism." The report continued that WTO negotiations would improve market access and the predictability and stability of trade and investment. The report notes that a key challenge for Thailand's future economic performance is the government's ability to restore private investor confidence and to proceed with pending structural reforms, including stalled privatizations that would help improve the country's

competitiveness. The report also underlines the need for Thailand to expand its tariff bindings and to simplify its relatively complex tariff regime. The services sector, which makes up a large part of the Thai economy, has benefited so far from liberalization but would

grow further if multilateral commitments under the GATS were expanded, according to the review.

The Board of Investment (BOI), established by the Investment Promotion Act of 1977, is Thailand's central investment promotion authority. The BOI lists five priority sectors (detailed below), covering hundreds of types of businesses eligible for investment incentives. Generally, the most generous incentives are offered to those economic activities that bring new technology to Thailand and locate investment in less-developed provinces. BOI incentives are of two basic types: tax-based (including tax holidays and tariff exemptions) and non-tax privileges (guarantees, special permissions, services, etc.).

The BOI's investment policy is as follows:

- In order to maximize the benefits of investment to the country, and in line with policies supporting good governance, the BOI uses a performance-based system that requires promoted investors to submit evidence of compliance with the conditions of their approval in order to claim incentive benefits.

- To increase the global competitiveness of Thai exports, projects with an investment 10 million baht (approximately US$300,000) or more, excluding the cost of land and working capital, are required to obtain international standards certification, such as International Standards Organization (ISO) 9000.

- In order to ensure that Thai investment policy is in line with all international obligations, the BOI has lifted all local content and export requirements.

- The BOI pursues a decentralization policy to encourage the distribution of opportunities and prosperity to the least-developed provinces. Projects locating in the least-developed provinces will receive maximum incentives. These provinces consist primarily of provinces in which average per capita income has been below 85 percent of the national average during the past three years, including Sisaket, Nong Bua Lamphu, Surin, Yasothon, Maha Sarakham, Nakhon Phanom, Roi-Et, Kalasin, Sakon Nakhon, Buri Ram, Amnat Charoen, Phraea, Phayao, Nan, Satun, Pattani, Yala, and Narathiwat.

- To support the development of small- and medium-sized enterprises (SMEs), the minimum investment amount shall remain at one million baht (approximately $30,000), excluding the cost of land and working capital.

- To promote investment in key sectors, five priority areas have been identified:
- Agriculture and agricultural products;
- Environmental protection and/or restoration;
- Direct involvement in technological and human resource development;
- Public utilities, infrastructure, and services and;
- Targeted industries, including agro-industry, automotive, information technology/electronics, high value-added services, semi-conductors, manufacture of machinery and equipment, software parks, and high-quality upstream steel.

Besides the five priority activities, the BOI has identified other activities which are also eligible for promotion as follows:

- Mining, ceramics and basic metals;
- Light industry;
- Metal products;
- Chemicals, paper and plastic;
- Services and public utilities

Specific BOI incentives include:

- Tax incentives: exemptions/reductions of import duties on imported machinery; reductions of import duties on imported raw materials and components; exemptions from corporate income taxes for three to eight years; and, deductions from net income of infrastructure costs.

- Permissions: to bring in foreign nationals to undertake investment feasibility studies; to bring in foreign technicians and experts to work under promoted projects; to own land for carrying out promoted activities.

- Guarantees: against nationalization; against competition by new state enterprises; against state monopolization of the sale of products similar to those produced by promoted firms; against price

controls; against tax-exempt import by government agencies or state enterprises of competitive products; and, of permission to export.

Tax incentives are the BOI benefits that offer the greatest advantage over non-promoted industries, though their relative value has declined in recent years with the general reduction of import duties and elimination of the former business tax system. The Value Added Tax (VAT) Law, which eliminated the business tax exemption, has no provision for the BOI to offer VAT exemptions or reductions. Investors must submit an application form along with supporting documentation to be considered for incentives. In most cases, the BOI decides within sixty days whether or not a project is eligible for investment privileges. BOI policy is to complete action on applications for projects valued in excess of 750 million baht (approximately US$22 million) within 90 days.

The following revisions to the BOI investment promotion scheme became effective on August 1, 2000:

- For projects in the manufacturing sector, majority or total foreign ownership is permitted in any zone. However, for projects in agriculture, animal husbandry, fishery, mineral exploration and mining and service businesses under Schedule One of the Foreign Business Act (FBA) B.E. 2542, Thai nationals must hold shares totaling not less than 51 percent of the registered capital.

- The maximum allowable debt-to-equity ratio was lowered from 4:1 to 3:1 for a newly established project, but expansion projects will be considered on a case-by-case basis.

- Except for the electronic and agriculture industries, projects investing less than 500 million baht (about US$15 million), regardless of overall investment size, must produce added value equal to at least 20 percent of sales revenue.

- For projects of more than 500 million baht (about US$15 million), excluding land and working capital. A feasibility study must be presented at the time of application.

- State-enterprise projects are not eligible for BOI promotion, but concession projects (either Build Transfer Operate or Build Operate Transfer) by the private sector are eligible with some restrictions. For privatization of state enterprises, only expansions after the privatization are eligible for BOI promotions.

- The BOI will continue to promote relocation of projects to Zone 2 and Zone 3 (special groups of 12 and 58 provinces, respectively). However, in order to be eligible for new incentives, projects must relocate to an industrial estate or a promoted industrial zone. The income tax holiday is now five years for qualifying investments but the project with capital investment of 10 million baht (about US$300,000) or more could be eligible for income tax holiday of eight years if it is relocated to certain provinces in zone 3

- The 58 provinces of Zone 3 will be divided into two areas, based on each province's state of development. New projects in Zone 3 will no longer be eligible for a 75 percent reduction of import duty on raw materials used for domestic sales but will be eligible for exemption of import duty on machinery.

In 2001, the Thai government amended its investment promotion conditions for regional operating headquarters (ROHs). Business projects with registered capital of at least 10 million baht (approximately US$300,000), and in which overseas revenue accounts for at least half of annual income, are now eligible to receive BOI incentives, such as permission to own land, eased provisions for hiring expatriate staff, and additional tax breaks (such as a preferential corporate income tax rate of 10 percent versus 30 percent and a flat 15 percent personal income tax rate for foreign employees for four years). In July 2008, the BOI waived import tariffs on machines for research and development for ROHs in order to attract more investment. There are currently 65 BOI-promoted ROH projects, most of which are in the manufacturing and service sectors, including U.S. companies such as Exxon Mobil Co., Ltd., Chevron Asia South Co., Ltd., General Motors Southeast Asia Operations Co., Ltd., and Ford Services (Thailand) Co., Ltd.

In addition, the BOI has extended tax incentives in the automotive machinery sector so that all automobile assemblers are eligible for import duty exemptions on machinery, regardless of the BOI geographic investment zone in which they operate. Total initial investment costs for eligible projects must be at least 10 billion baht (approximately US$300 million).

In September 2002, the BOI promoted cluster development by relaxing zoning regulations. Projects formerly required to locate in Zones 2 or 3 are now free to expand wherever they wish. On environmental protection grounds, however, tanneries, bleaching and dying plants, cyanide-based heat treatment facilities, and facilities for the recycling/re-use of unwanted materials are ineligible for this zoning relaxation.

The BOI has also made "call center" facilities eligible for tax incentives. To be eligible, however, the project must be majority Thai-owned.

Thailand's membership in the WTO has led to a relative decline in the importance of tax-based investment incentives. In general, therefore, the BOI is placing increasing emphasis on business facilitation and investment services.

In June 2004, the BOI introduced special investment privileges to promote investment in four northeastern provinces, namely Chiayaphum, Nong Khai, Ubon Ratchathani, and Udon Thani, due to their low per capita Gross Provincial Product (GPP). With this designation, all operations located in these four provinces will receive special privileges (see below), regardless of their location within or outside of industrial estates. These incentives include:

- A 50 percent reduction in corporate income tax for an additional five years beyond the initial 8-year exemption;

- Double income tax deduction of costs for transportation and utilities for a period of 10 years;

- Deduction of 25 percent of the project's infrastructure construction costs from net profit (for tax purpose) for a period of 10 years.

Additionally, the BOI will provide a one-stop service center for investors in these provinces in order to work and coordinate with related government agencies on their behalf.

In early December 2005, the BOI approved new incentives in the form of tax advantages that should help boost the competitiveness of companies investing in Thailand's electrical and electronics industries. In order to qualify for new incentive packages, electrical and electronics companies have to be long-term investors with total investment of at least 15 billion Baht (approximately US$450 million) among other requirements. Those incentives include 8-year corporate income tax exemption periods for projects in zone ¶3. However, priority activities such as production of wafers and solar cells, will receive 8-year corporate income tax holidays regardless of project location. Furthermore, the BOI has granted

duty exemptions for all electrical and electronics projects - not just those designed as long-term projects - permitting duty-free imports of upgraded or replacement machinery for the life of project operations. As long as they maintain BOI promotion status, projects can import machinery duty free on an on-going basis. In addition, the BOI has also expanded zone-based fiscal incentives for zone 1 and zone 2 (Bangkok and surrounding provinces) for all electrical and electronics projects. For example, projects in Bangkok located outside industrial estates were previously ineligible for corporate income tax holidays. Under new incentives, they will be eligible for 5-year exemptions.

In late 2006, Kosit Panpiamrat, then Deputy Prime Minister and Minister of Industry, announced that the BOI should adopt a strategy focusing on strengthening the future industrial sector. The policy consists of the development of engineering and supporting industries complying with the development of knowledge and intellectual capital, promotion of linkages between foreign investment and domestic industries, and support of Thai-owned investment in traditional service industries.

In mid-2007, to promote energy conservation, the BOI introduced a special package for the manufacture of "eco-cars." BOI conditions require that the vehicles meet international standards and other specifications such as production of 100,000 units per year from the fifth year of operation, five liters per 100 kilometers of engine fuel consumption, and a minimum pollution standard of EURO 4 or higher. Minimum investment is required to be at least five billion baht (or approximately US$150 million). Regardless of plant locations, the privileges will include a corporate income tax waiver of eight years and duty-free importation of machinery. However, the application window closed on November 30, 2007, with seven auto makers making submissions. The BOI granted eco-car privileges to Honda Automobile (Thailand), Suzuki Automobile Thailand, Siam Nissan

Automotive, Mitsubishi Motors (Thailand), Toyota Motors (Thailand), and Tata Motors (Thailand).

In an attempt to revive the economies of the three southernmost provinces (Pattani, Yala, and Narathiwat), the BOI launched a special package for investment projects in the area in mid-2007. The package includes maximum tax incentives and 100 percent tax deductions for capital investment for three years. Applications must be submitted to the BOI by the end of 2009.

In November 2008, the BOI and the Thai government began offering maximum incentives in six priority industries to celebrate Thailand's Investment Year 2008-2009. The measures are aimed at boosting investment during the projected global economic slowdown in ¶2009. Under the special offer with BOI, investors can submit investment applications in the following six target sectors located in any provinces except Bangkok by the end of 2009. The special incentive package includes eight-year exemption of corporate income tax, a 50 percent reduction of corporate income tax for five more years, double deduction of transportation and utilities costs, and a 25 percent deduction from net profit for facility installation and construction costs on top of normal depreciation capital. The six target sectors are:

- Energy saving and alternative energy related businesses such as fuel produced from agricultural products;

- High technology businesses such as functional fiber, medical equipment and vehicle parts;

- Environmental-friendly materials and products manufacturing;

- Mega projects-related businesses;

- Tourism and real estate-related businesses; and

- High-tech agricultural material-based business such as sweetener, dextrin and modified starch manufacturing.

Complete information on BOI policies, programs, incentives, and

application procedures can be found on the BOI web site at www.boi.go.th.

Right to Private Ownership and Establishment

Private entities may establish and own business enterprises. The principal forms of business organization under Thai law are sole proprietorships, partnerships, limited companies, and public limited companies. In addition, branches of foreign corporations are recognized, and a "representative" or "liaison" office of a foreign company may receive special recognition. Regardless of the form of business organization, most businesses must apply for business registration. Establishment of a business in certain sectors by a foreign entity may be restricted by the Foreign Business Act, or for U.S. investors may benefit from the Treaty of Amity and Economic Relations (AER) as discussed above.

A Thai public limited company is similar to a corporation in the United States, and may be wholly owned by a foreigner unless the corporation is involved in a business activity reserved for Thai nationals. A public limited company is allowed to offer its shares to the public. Eight laws pertaining to individual industries limit foreign ownership of companies listed on the Stock Exchange of Thailand.

Protection of Property Rights

Property rights are guaranteed by the Constitution against condemnation or nationalization without fair compensation. Secured interests in property are recognized and enforced.

Thailand has a civil law system under which all laws are embodied in statutes or codes promulgated by the government. This practice is in contrast to the common law system in many Western countries, where court interpretations of statutes serve as governing legal precedent.

There is an independent judiciary that provides a forum for settlement of disputes. Agencies of the government, as parties to commercial contracts, may be sued in the courts, and cannot raise a defense of sovereign immunity. However, state property is not subject to execution.

There are four basic codes: Civil and Commercial Code, Criminal Code, Civil Procedure Code, and Criminal Procedure Code. In adopting these codes early in the twentieth century, Thailand selected features of the two major Western legal systems (common law and civil law), and adapted to circumstances in Thailand provisions drawn from Britain, Germany, Switzerland, France, Japan, Italy, India, and other foreign systems. Decisions and rulings of the judiciary and civil service can have considerable force as precedents.

There are three levels to the judicial system in Thailand: the Court of First Instance, which handles most matters at inception, the Court of Appeals, and the Supreme Court. There are specialized courts such as the Labor Court, Family Court, Tax Court, the Central Intellectual Property and International Trade Court, and the Bankruptcy Court.

Intellectual Property Protection:

Widespread counterfeiting and piracy continue to plague intellectual property rights owners in Thailand. Particular areas of concern include counterfeiting of pharmaceuticals, apparel, and accessories; and optical media piracy, signal theft, book piracy, camcording and end user software piracy. In a trend of particular concern, an increasing volume of pirated and counterfeited products manufactured in Thailand is exported. The lack of sustained and coordinated enforcement, and, in particular, the lack of prosecution, remains a substantial problem. In 2007, Thailand was elevated from the Special 301 Watch List, where it had been since 1994, to the Priority Watch

List, reflecting an overall deterioration in the protection and enforcement of IPR. Thailand remained on the Special 301 Priority Watch List in 2008.

Thailand's legal regime is in general compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPs), but questions remain about Thailand's implementation of obligations to protect pharmaceutical and agricultural test data from unfair commercial use, treatment of conflicting trademarks and geographical indications, broadcasting, and digital copyright issues. Thailand is a signatory to the Berne Convention, but not the World Intellectual Property Organization Copyright Treaty (WCT) or Performances and Phonograms Treaty (WPPT). In January 2008, the National Legislative Assembly approved Thailand's inclusion in the Patent Cooperation Treaty and the Paris Convention. Procedures to formally accede are still underway.

Transparency of Regulatory System

In 1999, Thailand enacted a new Trade Competition Act intended to strengthen the government's ability to regulate price fixing and market monopolies. The law established a Trade Competition Commission with the authority to place limitations on market share and revenues of firms with substantial control of individual market sectors, to block mergers, and other forms of business combinations, and to levy fines for price-fixing and other proscribed activities. Since the law's implementation, several foreign motorcycle distributors were found guilty of violating the Act by forcing sales agencies to sell only their brands. The government continues to have the authority to control the price of specific products under the Act Relating to Price of Merchandise and Service B.E, 2542 (1999), which was meant to be phased out with the advent of a Competition Act. The Department of Internal Trade under the Ministry of Commerce administers this law and interacts with the affected companies although only the "Committee on Price of Merchandise and Service" make the final decision on what products to add or remove from price controls. As of January 2009, out of 36 controlled commodities, only sugar is subject to a price ceiling. Besides the 36 controlled commodities, practically any producer of consumer products is prohibited from raising prices without first notifying the Committee of its intention to do so. The government also uses its controlling stakes in major suppliers of products and services such as Thai Airways and PTT to influence prices in the market.

Thailand has extensive legislation aimed at the protection of the environment, including the National Environmental Quality Act, the Hazardous Substances Act, and the Factories Act. Food purity and drug efficacy are controlled and regulated by a Food and Drug Administration with authority similar to its U.S. counterpart. Likewise, labor and employment standards are set and administered by the Ministry of Labor.

Despite the good intentions of most regulatory regimes, consistent

and predictable enforcement of government regulations remain problematic for investment in Thailand. Gratuity payment to civil servants responsible for regulatory oversight and enforcement remains a common practice. Through such payment, transactions can be expedited. Firms that refuse to make such payments can be placed at a competitive disadvantage when compared to other firms in the same field. However, most observers believe that the overall trend toward transparency in regulatory enforcement is positive, especially for foreign-owned businesses.

Efficient Capital Markets and Portfolio Investment

The Thai government maintains a regulatory framework that broadly encourages investment and largely avoids market-distorting support for specific sectors. Government policies generally do not restrict the free flow of financial resources to support product and factor markets, and credit is generally allocated on market terms rather than by "directed lending." Legal, regulatory, and accounting systems are largely transparent, despite significant problems in

some areas. The Thai government has devoted considerable effort to bringing these systems into line with international norms, and important progress has been made. However, much remains to be done to implement legal and regulatory changes, and human resource constraints will limit overall progress in some areas, particularly auditing, for the foreseeable future.

In 2002, Thailand established National Corporate Governance Committee (NCGC), chaired by the Prime Minister or Deputy Prime Minister, which was assigned to implement international-standard corporate governance policies. In conjunction with Thai Rating and Information Services Co., Ltd. (TRIS), the Stock Exchange of Thailand (SET) and the Thai Securities and Exchange Commission (SEC) began rating companies on their corporate governance practices. The NCGC claimed that Thai corporate governance policies cover most key points addressed by the Sarbanes-Oxley Act in the U.S.

Foreign investors are not restricted from borrowing on the local market, but there are a number of regulations that affect foreign portfolio investment. Thailand maintains regulatory maximum foreign ownership limits, and shares of listed companies are traded on both a domestic and alien (or foreign) board to enable authorities to track foreign ownership. Limits on foreign ownership of Thai companies are perhaps most prominent in the financial sector. Under the new Financial Institutions Business Act (implemented in August 2008), foreign share holders may retain a 49 percent stake in financial institutions, up from 25 percent under the previous acts. Foreign ownership between 25 percent and 49 percent requires prior approval from the Bank of Thailand. The new law also allows the Bank of Thailand to authorize foreign ownership above the 49 percent limit if deemed necessary to support the stability of the overall financial system in an economic crisis. This type of emergency action also requires the support and approval of the Minister of Finance. In theory, the private sector has access to a wide variety of credit instruments, ranging from fixed term lending to overdraft protection to bills of exchange and bonds. In fact, however, private debt markets are not well-developed, and most corporate financing, whether for short-term working capital needs, trade financing, or project financing, is commercial bank and financial institution borrowing. The Ministry of Finance is working on developing Thailand's debt markets.

Following the 1997 financial crisis, banks generally overhauled their lending systems and have since taken a more conservative approach. Thai borrowers were also reluctant to take on more debt due both to overcapacity and a desire to maintain clean balance sheets. In recent years, external factors such as problems in the U.S. sub-prime market raised the volatility of international investment flows and the global financial system, adding risks to Thailand's overall macroeconomic and financial stability. Due to perceived increased risk and ongoing concerns about their credit quality since the global economic downturn, financial institutions have tightened their credit standards for loans and credit lines to enterprises, as well as to households. After peaking at 47 percent of total lending in May 1999 from the financial crisis, non-performing loans slowly declined to stand at 3.29 percent of total loans in September 2008.

The Thai Asset Management Corporation (TAMC) is a major component of the government's financial reform plan with broad legal powers to expedite debt restructuring and press creditors and debtors to the negotiating table. Assets are transferred at collateral value, excluding personal guarantee, with payment coming in the form of ten-year non-negotiable bonds issued by the TAMC and guaranteed by

the Financial Institution Development Fund (FIDF). Interest paid by the bonds is tied to average deposit rates quoted by Thailand's five largest banks.

In addition to legal limits on foreign ownership in certain sectors, Thai firms employ defenses against foreign investment primarily through cross- and stable-shareholding arrangements. Such defenses against hostile takeovers are typically applied against all potential investors, rather than against foreign potential investors alone. Companies are permitted to specify limits on foreign

ownership more strict than those established by the government. In general, limits on foreign ownership and participation in the Thai economy have eased since the Asian Financial Crisis.

Political Violence

On September 19, 2006, the military overthrew the administration of Thaksin Shinawatra in Thailand's first coup since 1991. The bloodless coup took place in a period of political uncertainty while the PM and most of his cabinet were abroad. Opposition to the coup was mostly limited and non-violent, though on New Year's Eve 2006 a series of eight bombs exploded in different areas of downtown Bangkok, killing three people and wounding thirty-eight. Interim Prime Minister Surayud initially blamed the explosions on elements loyal to Thaksin, but to date no formal charges have been brought against any individual or group and there are numerous theories as to the actual perpetrators and their motives.

In August, 2007, the National Legislative Assembly approved a new constitution, replacing the 1997 constitution. On December 23, 2007, peaceful national elections were held to restore a democratically-elected government. Throughout the second half of 2008, a political protest group called the People's Alliance for Democracy (PAD) held large demonstrations against the government. In late August 2008, PAD protestors occupied Government House, where the Prime Minister's Office is located; they held the compound for months. PAD protestors also occupied Bangkok's civilian airports on November 25, impeding the facilities' functioning and departing only on December 3, after the collapse of the government headed by then-PM Somchai Wongsawat.

During late 2008, there were occasional firearms discharges and explosions in the vicinity of the Government House compound and the airports, when they were under PAD occupation. The explosions seemed intended to injure PAD sympathizers. Several people died as a result, and dozens were injured. An October 2007 PAD protest at the parliament led to a clash between PAD and the police, with at least two PAD sympathizers killed and over 100 PAD protestors and police injured. Protestors sympathetic to Thaksin, and opposed to PAD, have also held large rallies in Bangkok. These gatherings have been largely peaceful, although PAD and pro-Thaksin demonstrators have confronted each other violently on occasion. The protests largely died down by the end of December 2008, as a new government led Prime Minister Abhisit Vejajjiva settled into office.

An important political problem for the Thai government is the ongoing political violence in Thailand's southern-most provinces (Yala, Narathiwat, and Pattani). Efforts to quell the ethno-nationalist insurgency, which has led to over 3,000 deaths since 2004, have not yet had much effect.

Corruption

Thailand has laws to combat corruption. The independent National Counter-Corruption Commission (NCCC) coordinates official efforts against corruption. In December 2003, Thailand is a signatory to the U.N. Convention against Corruption but has delayed ratification pending a review of legal issues.

American executives with long experience in Thailand advise new-to-market companies that it is far easier to avoid getting started with corrupt transactions than to stop such practices once a company has been identified as willing to operate in this fashion. American firms that comply with the strict guidelines of the Foreign Corrupt Practices Act are able to compete successfully in Thailand.

Despite recent improvements, both foreign and Thai companies continue to complain about irregularities in the Thai Customs Department. Recent Thai administrations have stated publicly their intention to improve transparency in the evaluation of bids and the awarding of contracts. Increasing media scrutiny of public figures has raised political pressure to curtail favoritism and corruption.

However, convictions against public officials on corruption-related charges are rare, and the legal system offers inadequate deterrence against corruption. Nonetheless, the press features frequent allegations of irregularities in public contracts, most notably over the use of public lands, procurement favoritism (e.g., revising requirements so that a preferred company wins over its competitors), and police complicity in a variety of illegal activities.

According to some studies of Thailand, a cultural propensity to forgive bribes as a normal part of doing business and to equate cash payments with finders' fees or consultants' charges, coupled with the low salaries of civil servants, encourages officials to accept illegal inducements. The leaders of the 2006 coup announced that the key impetus to their action was the "widespread corruption" of Thaksin and his government. An "Asset Examination Committee" was created to examine suspect transactions of the previous regime, and formal charges were levied against several members of Thaksin's family in 2007.

Bilateral Investment Agreements

The 1966 iteration of the U.S.-Thai Treaty of Amity and Economic Relations (AER), discussed above, allows U.S. citizens and businesses incorporated in the U.S., or in Thailand that are majority-owned by U.S. citizens, to engage in business on the same basis as Thai nationals. Under the AER, Thailand is permitted to apply restrictions to American investment only in the fields of communications, transport, banking, the exploitation of land or other natural resources, and domestic trade in agricultural products.

In October 2002, the U.S. and Thailand signed a bilateral Trade and Investment Framework Agreement (TIFA). The TIFA establishes a Trade and Investment Council (TIC), which serves as a forum for discussion of bilateral trade and investment issues such as intellectual property rights, customs, investment, biotechnology, and other areas of mutual concerns.
Thailand also has bilateral investment agreements (called agreement on the promotion and protection of investment) with 42 countries, including Germany, the Netherlands, the United Kingdom, China, and members of the Association of Southeast Asian Nations (ASEAN). These agreements establish guidelines for expropriation compensation and the repatriation of capital, but do not include national treatment provisions.

OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) is open for business in Thailand, and can provide political risk insurance for inconvertibility and transfer, expropriation, and political violence for U.S. investments including equity, loans and loan guarantees, technical assistance, leases, and consigned inventory or equipment. OPIC Insurance is currently insuring three U.S. corporations/organizations involved in telecommunications, humanitarian services, and economic development in Thailand. Most recently, OPIC provided insurance to the Asia Foundation. OPIC direct loans and loan guarantees are also available for business investments in Thailand, and cover sectors as diverse as tourism, transportation, manufacturing, franchising, power, and others. Historically, OPIC has committed over US$32.5 million in financing to investments in Thailand. In addition, OPIC supports seven equity funds that are eligible to invest in projects in Thailand.

OPIC established a special line of credit of up to US$175.75 million to mobilize U.S. private sector investment in the reconstruction of nations devastated by the December 2004 tsunami. The credit line was part of an OPIC Tsunami Reconstruction Finance Initiative intended to help speed the rehabilitation of housing and infrastructure in affected countries, including Thailand. Thailand became a member of the Multilateral Investment Guarantee Agency (MIGA) in October ¶2000.

OPIC-financed loans of up to US$200 million per project are also available for business investments in Thailand, and cover sectors as diverse as tourism, transportation, manufacturing, franchising, power, and others. In addition, OPIC supports six new private equity

funds that are eligible to invest in clean and renewable energy projects in emerging markets worldwide, including Thailand. Through OPIC, investors have access to political risk insurance, debt financing, and equity.

Labor

According to the National Statistics Office, as of October 2008, Thailand has a labor force of 38.34 million workers out of a total population of 66.51 million. This figure includes Thai nationals fifteen years of age or older.

The official unemployment rate averaged 1.38 percent during 2008, but does not include an estimated one to two million seasonally unemployed agricultural workers. As a result of the global economic downturn, the manufacturing sector has begun to show signs of increased unemployment since May 2008. The agricultural and service sectors have been able to absorb the unemployed works from the manufacturing sector, keeping the overall rate very low. Unemployment is currently close to the level that prevailed before the 1997-98 financial crisis.

The Thai government's decision not to forcibly repatriate large numbers of foreign workers in the agriculture, fisheries, construction, and other semi-skilled sectors may also have affected employment levels. Since 2004, the Thai government has allowed illegal migrant workers from the neighboring countries of Laos, Cambodia, and Burma, to register with the government to legally stay and work in Thailand. As of November 2008, there were 560,000 migrants registered with the Thai government; however, private and government sources estimate that the number of illegal migrants currently living and working in Thailand could be as high as 1.5 million.

Despite past rapid growth in the industrial and service sectors, 37 percent of the Thai labor force is still employed in the agricultural sector. However, the shift of workers from agriculture is continuing, especially in the Northeast, where agricultural productivity and investment are lower. As a consequence, recent years have seen a constant flow of rural, generally unskilled Thais seeking work in Bangkok and the more industrialized regions, both seasonally and on a permanent basis. This ready availability of migrant labor contributed to the rapid growth of Thailand's industrial and construction sectors.

In the past, many multinational firms brought in expatriate professionals because qualified local personnel simply were not available, even at high salaries. Finding, training, and retaining qualified employees to work in the manufacturing facilities being developed in industrial estates, such as those along the Eastern Seaboard, will continue to be a challenging government priority.

Thailand's educational system is still geared to the needs of a largely agrarian, traditional economy and society and lags behind the country's contemporary skills requirements. The government has made great progress over the last two decades in providing basic education. Thailand's gross primary school enrollment in 2008 was 100.35 percent (Note: The official primary enrollment age is 6-11; in practice, however, children outside that age group may also enroll in school, pushing the percentage over 100). The learning rate (the ratio of the population over 15 years of age which has completed primary education to the total population of 15 years of age and over) was measured by the Thai government as 60.2 percent. Of a total of 38.34 million employed persons in 2008, 31.1 percent had education of less than elementary level, 21.9 percent had elementary, 15.1 percent had lower secondary, 13.0 percent had upper secondary, and 15.3 percent had university degrees.

An integral part of Thailand's educational reform program, the country's first National Educational Act was promulgated in 1999. The Act stipulates the right of all Thai citizens to receive free basic education public education for at least twelve years and raised the level of compulsory education from six to nine years.

Pursuant to the 1999 Act, the free basic education and compulsory education provisions took effect in August 2002. Children are required to enroll in a basic education institution from the age of seven, and must remain in the educational system through the age of sixteen. In January 2009, the government announced a plan to pay for uniforms, fees, school supplies and other expenses that had kept the children from poor families from attending school despite the fact that there were no tuition charges.

All employees must define the terms of employment for their staff, and employers with ten or more employees are required to specify working regulations. The Labor Protection Act, enacted in 1998, brought labor practices more in line with International Labor Organization (ILO) standards. The law cut the workweek to a maximum of forty-eight hours, including overtime for all types of work, with overtime payable at one and one-half times the hourly rate.

Hazardous work may not exceed seven hours per day or forty hours per week. All employees are entitled to a vacation of six workdays per year, in addition to thirteen holidays traditionally observed in Thailand. Under the labor law, the employment of children under the age of fifteen is prohibited, and there are restrictions on the employment of children and youths between the ages of fifteen and eighteen.

The Thai government amended the Labor Protection Act in 2008 to help promote standards for contract labor. The Act now requires an employer to provide benefits and welfare without discrimination to the contract laborers. The Act also extended protection for employees against sexual abuse and harassment in the workplace.

Thailand's social safety net is considered inadequate by industrialized-country standards. The social security scheme consists of two systems. The Workmen's Compensation Act of 1994 requires employers with one or more employees to contribute 0.2-1.0 percent (depending on the assessed risk of the workplace) of the employees' annual earnings to the Workmen's Compensation Fund. The Fund provides benefits to employees who are injured, sick, disabled, or die from work-related injury. Pay-outs range from a minimum of 2,000 to a maximum of 9,000 baht per month. The second major system, the Social Security Act, has been in effect since 1990. This Act also covers enterprises with one or more employees. Contributions to the Social Security Fund from the government, the employer, and the employee are mandated. The Social Security Fund provides compensation to insured workers under six categories: injury or sickness, disability, maternity, death, child welfare, and pensions. In the first four categories, each party contributes 1.5 percent of the wages to the insured. For child welfare and old age cases, three percent is contributed. Effective January 1, 2004, the Social Security Fund covers unemployment compensation. If an employee is laid off, he is entitled to receive 50 percent of his wages for 180 days. In practice, disbursal of unemployment benefits is dependent on the state of the economy and the government's financial resources.

The labor relations climate is generally peaceful, and formal strikes are infrequent. There were two worker strikes recorded in 2007 and three employer lockouts. Less than two percent of the total labor force is unionized; unionization rates are high only in state enterprises. As of December 2007, there are 43 state-owned enterprise unions with 170,630 members, and 1,243 private labor unions with 331,250 members.

Foreign-Trade Zones/Free Ports

The Industrial Estate Authority of Thailand (IEAT), a state-enterprise under the Ministry of Industry, established the first industrial estates in Thailand, including Laem Chabang Industrial Estate in Chonburi Province and Map Ta Phut Industrial Estate in Rayong Province. More recently, private developers have become heavily involved in the development of these estates. The IEAT currently operates twelve estates, plus 26 more in conjunction with the private sector in 14 provinces nationwide. Private sector

developers operate over 50 industrial estates, most of which have received promotion privileges from the Board of Investment.

In addition, the IEAT established ten special IEAT Free Zones (renamed from export processing zones or free trade zones), reserved for the location of industries manufacturing for export only, to which businesses may import raw materials and export finished products free of duty (including value added tax). These zones are located within industrial estates, and many have customs facilities to speed processing. The free trade zones are located in Chonburi (two), Lampun, Pichit, Songkhla, Samut Prakarn, Bangkok (at Lad Krabang), Ayuddhya (two), and Chachoengsao. In addition to these zones, factories may apply for permission to establish a bonded warehouse within their premises to which raw materials, used exclusively in the production of products for export, may be imported duty free.

Foreign Direct Investment Statistics

Foreign direct investment (FDI) (net inflows from non-banking sector only), totaled US$8.3 billion in 2008 (Jan-Oct), compared with US$10.2 billion in 2007 (full year), and US$10.5 billion in 2006. Major FDI recipients included real estate financial institutions (US$1.7 billion), real estate (US$1.1 billion), machinery & transport equipment (US$1.1 billion), services (US$719 million), and

mining and quarrying (US$545 million) sectors.

Japan was the biggest source of FDI in 2008 (Jan-Oct), at US$2.15 billion, closely followed by Singapore at US$2.04 billion. U.S. FDI for the same period was US$983 million, and the United Kingdom FDI was US$329 million. There are no reliable statistics available for cumulative investment by country of origin.

The Embassy estimates the total present value of U.S. investment in Thailand to be in excess of US$23 billion. According to the Board of Investment (BOI), in 2008 (Jan-Nov), 26 U.S. investment projects approved by the BOI totaled 7.3 billion baht (US$221.5 million), including the following (note that a U.S. investment is classified as any investment with at least ten percent U.S. capital, and companies below are based on January to June 2008 data only; projects listed below could be either an expansion project or a newly established factory):

- LSI (Thai) Ltd. with 7.2 billion baht (US$218 million) investment. Integrated circuit with 700 million piece capacity; 100 percent Colgate-Palmolive (Thailand) Ltd. with 739.6 million baht (US$23.0 million) investment in soap production with 75 percent targeted for export;

- General Motors (Thailand) Co., Ltd. with 7.1 billion baht (US$214 million) investment. 48,000 vehicle units, 50 percent Colgate-Palmolive (Thailand) Ltd. with 419 million baht (US$13.0 million) investment for body care products with 81 percent for export;

- Xaloy Asia (Thailand) Ltd. with 130 million baht (US$4.0 million) investment for production of parts for plastic injection machine with 100 percent for export;

- Rubberon Technology Corporation Ltd. with 54 million baht (US$1.7 million) investment for synthetic rubber products with 90 percent for export;

- Honeywell Electronic Materials (Thailand) Ltd. with 52.9 million baht (US$1.6 million) investment for production of thermal interface material for semiconductor with 100 percent for export.

Web Resources

- Financial Sector Master Plan (FSMP):
http://www.bot.or.th/bothomepage/BankAtWork/
FinInstitute/FISystemDevPlan/ENGVer/pdffile/e ng.pdf

- BOI web site at http://www.boi.go.th/

- IEAT web site at http://ieat.go.th/

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